

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Zajakowski Uhl	Team: Squad #10	CCRB Case #: 201909701	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/30/2019 7:46 PM	Location of Incident: [REDACTED]	Precinct: 60	18 Mo. SOL 4/30/2021	EO SOL 12/15/2021	
Date/Time CV Reported Wed, 10/30/2019 10:09 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 11/07/2019 11:17 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Desena	03631	961726	060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Brianna Orloff	08500	961981	060 PCT
2. LT Michael Desposito	00000	948876	060 PCT
3. POM Anthony Luongo	22042	964628	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Desena	Force: Police Officer Robert Desena used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Robert Desena	Abuse: Police Officer Robert Desena threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Robert Desena	Abuse: Police Officer Robert Desena threatened to notify Administration for Children's Services.	[REDACTED]
D.POM Robert Desena	Abuse: Police Officer Robert Desena threatened individuals with the arrest of § 87(2)(b) [REDACTED]	[REDACTED]
E.POM Robert Desena	Off. Language: Police Officer Robert Desena made comments to § 87(2)(b) [REDACTED] referencing disability.	[REDACTED]
F.POM Robert Desena	Abuse: Police Officer Robert Desena threatened to remove § 87(2)(b) [REDACTED] to the hospital.	[REDACTED]

Case Summary

At 10:09 PM on October 30, 2019, § 87(2)(b) called 911 to report a complaint against a police officer. Her complaint was received by the CCRB at 11:17 AM on November 7, 2019.

At 7:46 on October 30, 2019, § 87(2)(b) was at a shelter at § 87(2)(b) with her § 87(2)(b) son and § 87(2)(b) daughter. She had a dispute with a Department of Homeless Services (DHS) worker, who told § 87(2)(b) that she was not assigned to this shelter and was supposed to be at a shelter in the Bronx. The worker called the police when § 87(2)(b) refused leave. The responding officers were Police Officer Robert Desena and Police Officer Brianna Orloff of the 60th Precinct, and they told § 87(2)(b) she needed to leave the shelter. § 87(2)(b) refused to leave, so PO Desena pushed her out of the lobby into the foyer of the building, and then pulled her outside the side entrance (**Allegation A – Force, physical force, § 87(2)(g)**).

Once outside the shelter, § 87(2)(b) called 911 to file an IAB complaint. She stayed outside the side entrance to the shelter, and PO Desena and PO Orloff remained with her to ensure she did not re-enter. PO Desena threatened to arrest § 87(2)(b) if she re-entered the building (**Allegation B – Abuse of Authority, threat of arrest, § 87(2)(g)**). PO Desena also informed § 87(2)(b) that if she were arrested, her children would have to be taken by ACS (**Allegation C- Abuse of Authority, threat to notify ACS, § 87(2)(g)**). PO Desena told § 87(2)(b)'s children that if their mother re-entered the premises, he would have to arrest her (**Allegation D- Abuse of Authority, threat of arrest, § 87(2)(g)**). PO Desena then called his supervisor, Lieutenant Michael Desposito of the 60th Precinct and, while explaining the situation to him, referred to § 87(2)(b) as “crazy” and “going nuts” while she was standing within earshot (**Allegation E- Offensive Language other, § 87(2)(g)**). PO Desena then allegedly said he was going to call an ambulance to get § 87(2)(b) a psychological evaluation. (**Allegation F- Abuse of Authority, threat re: removal to hospital, § 87(2)(g)**). § 87(2)(b) refused this ambulance and continued to call IAB from outside the shelter. Lieutenant Michael Desposito and Police Officer Anthony Luongo, also of the 60th Precinct, arrived on the scene to investigate § 87(2)(b)'s IAB complaint.

After approximately two hours, an ambulance came to the shelter, in response to § 87(2)(b)'s 911 call, and § 87(2)(b) and her children were taken to § 87(2)(b) on her request.

The investigation received BWC from PO Desena, PO Orloff, PO Luongo, and Lieutenant Desposito for this incident (**Board Reviews 1, 2, 3, 4, 5, 6, 7, and IA 20**)

Findings and Recommendations

Allegation A: Force: Police Officer Robert Desena used physical force against § 87(2)(b)

§ 87(2)(b) gave a statement at the CCRB on November 18, 2019 (**Board Review 8**).

§ 87(2)(b) arrived at the shelter with her § 87(2)(b) son and § 87(2)(b) daughter. She had received a call earlier in the day from someone at DHS informing her that she was to be transferred to that shelter.

When she arrived, the DHS employee told § 87(2)(b) and her children that they were not assigned to that shelter and they needed to leave and go back to a shelter in the Bronx. § 87(2)(b) was distraught because she did not want to travel all the way back to the Bronx. The DHS employee told § 87(2)(b) to wait on the couch with her children.

After five or ten minutes, PO Desena and PO Orloff arrived at the lobby of the shelter. PO Desena and § 87(2)(b) recognized each other from a previous encounter and he told her she needed to leave. § 87(2)(b) became angry because she wanted to stay at the shelter. PO Desena told § 87(2)(b) to leave two or three times before grabbing her forearms from behind and pushing her about two feet into the vestibule entrance of the hotel and then through the main doors. § 87(2)(b) experienced pain in her arms and lower back as a result.

Allegation B: Abuse of Authority: Police Officer Robert Desena threatened to arrest § 87(2)(b)

Allegation C: Abuse of Authority: Police Officer Robert Desena threatened to notify Administration for Children's Services.

Allegation D: Abuse of Authority: Police Officer Robert Desena threatened individuals with the arrest of § 87(2)(b)

Allegation F: Abuse of Authority: Police Officer Robert Desena threatened to remove § 87(2)(b) to the hospital.

In her statement, § 87(2)(b) said that once she was outside the shelter, PO Desena threatened to have her removed to the hospital, threatened to arrest § 87(2)(b) if she entered the shelter again, and threatened to call ACS to take her children to foster care if she were to be arrested. PO Orloff remained quiet for the duration of the interaction. § 87(2)(b) called 911 to file an IAB complaint and a detective said he would send a supervisor. Lieutenant Desposito and PO Luongo came and determined that § 87(2)(b) had not done anything wrong and there was no criminal activity happening at the shelter.

After the incident, § 87(2)(b) called an ambulance for the pain in her arms and back. PO Desena also called an ambulance earlier in the interaction although § 87(2)(b) was unable to recall what happened with that ambulance. The ambulance that § 87(2)(b) called came and one of the paramedics spoke with the DHS employee for about 15 minutes before taking § 87(2)(b) to the hospital.

In his statement, PO Desena explained that once they were outside, he and PO Orloff stayed for about two more hours, because § 87(2)(b) did not leave the scene and they wanted to ensure that she did not re-enter. He told § 87(2)(b) that if she was arrested her children would have to go to ACS, but he also stated that he never told § 87(2)(b) she would be arrested for trespassing.

PO Orloff's statement was generally consistent with PO Desena's statement (**Board Review 13**). She stated that she did not hear PO Desena threaten to arrest § 87(2)(b) but § 87(2)(b) could have been arrested for trespassing. PO Orloff stated that § 87(2)(b) requested an ambulance for herself. PO Orloff also noticed that PO Desena spoke to § 87(2)(b)'s children, but she did not hear if he threatened § 87(2)(b)'s children with § 87(2)(b)'s arrest.

At 17:55 in PO Orloff's first BWC video (**Board Review 01**), § 87(2)(b) requested an ambulance from IAB. The footage did not capture PO Desena threatening to remove her to the hospital. PO Orloff's BWC footage shows that at 23:38, PO Desena states to § 87(2)(b) "If you go in there again you'll be arrested and your kids will go to ACS." At 26:56 PO Desena tells both of § 87(2)(b)'s children that if she goes back inside she will be arrested.

PO Desena's first BWC video (**Board Review 02**) of the incident was consistent with PO Orloff's BWC footage of the incident. At approximately 22:55 he explains to § 87(2)(b) that she will be arrested if she re-enters the shelter and then says that if she gets arrested, her kids go to ACS. At approximately 26:00 he is heard explaining to both of § 87(2)(b)'s children that she would be arrested if she reentered the shelter. The footage did not capture him threatening to remove § 87(2)(b) to the hospital.

PO Orloff and PO Desena's second BWC videos did not capture PO Desena threatening to remove her to the hospital (**Board Review 04 and 06**)

It is undisputed that PO Desena told § 87(2)(b) and her children that she would be arrested if she tried to enter the building again, because it would be considered trespassing as the security staff at the building had already asked her to leave. PO Desena stated that ACS would take § 87(2)(b)'s children if she were to be arrested.

According to NY CLS Penal Law Code 140.05 (**Board Review 11**), "a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises." NY CLS Penal §

140.05.

According to NYPD Patrol Guide Procedure No. 215-01, if a child is “without care or supervision due to hospitalization, death, or arrest of parent or person legally responsible for care and/or shelter,” and no relative or friend can provide care for the child, the officer is to “remove child/minor to Child Advocacy Center” and “remain with child until pickup by relative, friend, or the Administration for Children’s Services.” **(Board Review 14)**

§ 87(2)(g), § 87(2)(b)

Allegation E: Offensive Language: Police Officer Robert Desena made comments to § 87(2)(b) referencing disability.

In her statement, § 87(2)(b) alleged that PO Desena told her children that she was “crazy” while they were outside the shelter.

At 12:43 in PO Orloff’s first BWC **(Board Review 01)**, PO Desena can be heard saying “she’s crazy” over the phone. § 87(2)(b) appears to be standing approximately twenty feet away from him when this comment is made.

In PO Desena’s first BWC video **(Board Review 02)** at approximately 12:00, PO Desena is heard saying, “She’s crazy.” At the time the comment is made, § 87(2)(b) is off camera, but heard speaking in Russian. At 23:25, PO Desena is heard saying, “What’s up § 87(2)(b) Yea she’s still going nuts on us and she won’t leave” while § 87(2)(b) and her son appear to stand a few feet away.

PO Desena gave a second statement on September 4, 2020 **(Board Review 15)**. PO Desena was shown PO Orloff’s BWC and identified himself as the officer referring to § 87(2)(b) as “crazy.” PO Desena said he was speaking on the phone with Lieutenant Desposito when he used that term and described § 87(2)(b) as “crazy” because she was yelling and refusing to leave the premises.

While PO Desena was not speaking directly toward § 87(2)(b) when he used the terms, “crazy” and “going nuts” he was speaking about her within earshot and § 87(2)(b)’s statement indicated that she heard his comments. Thus, an offensive language allegation was pleaded against him.

§ 87(2)(b), § 87(2)(g)

According to the NYPD Patrol Guide Procedure No. 203-10, **(Board Review 16)** using discourteous or disrespectful remarks regarding another person’s disability is prohibited conduct.

§ 87(2)(g), § 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b) § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
- Police Officer Robert Desena has been a member of service for three years and has been a subject in two CCRB complaints and six allegations, none of which were substantiated.
§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined mediation for this case.
- As of February 13, 2020, there is no record of a Notice of Claim for this incident at the Comptroller's office. **(Board Review 18)**
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City. **(Board Review 19)**

Squad No.: 10

Investigator:	<u>Michael Uhl</u> Signature	<u>Inv. Michael Uhl</u> Print Title & Name	<u>9/24/2020</u> Date
Squad Leader:	<u>Eric Rigie</u> Signature	<u>IM Eric Rigie</u> Print Title & Name	<u>9/24/2020</u> Date
Reviewer:	<u> </u> Signature	<u> </u> Print Title & Name	<u> </u> Date